

July 13, 2005

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 556 SD2 HD2 CD1

On July 12, 2005, Senate Bill No. 556, entitled "Relating to Family Court" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill requires parents in a custody dispute to submit either a mutually agreed upon parenting plan or separate individual plans to the Family Court.

If the parties cannot agree on a parenting plan, this bill allows the court to order the involved parties to participate in alternate dispute resolution and/or develop and file a detailed parenting plan on a unilateral basis.

This bill is objectionable because it will be difficult for Pro Se parties (those representing themselves without a lawyer) to understand and fulfill the parenting plan requirements of this bill. Those that do have attorneys will incur additional costs to have their attorney prepare such a plan. Further, it is not clear that such plans will produce any real benefits, particularly when dealing with highly contentious and emotional issues in an adversarial setting.

Because the bill mandates that the court make written findings for every order issued in a disputed custody decision, the Judiciary pointed out that such a requirement would be problematic if applied to pre-decree temporary custody rulings because full evidentiary hearings are not usually held at this point in the proceedings. Furthermore, this provision creates additional expenses to litigants and an additional burden to Pro-Se litigants and unnecessary court delays.

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Requiring the parenting plan at the “outset of the action” does not make sense and is not well defined. It is unclear whether this term refers to the time the Complaint for Divorce is filed, the motion to modify custody is filed, or at some other point in the court proceedings.

Finally, it should be pointed out that section 1(d) is unnecessary and duplicative because the courts can already order Alternative Dispute Resolution (ADR) and counseling.

Therefore, I allowed Senate Bill No. 556 SD2 HD2 CD1 to become law as Act 244 effective July 12, 2005 without my signature.

Sincerely,

LINDA LINGLE